

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:F:HAR:B:POSTF-132588-02
RMBoulanger

date: July 31, 2002

to: William S. Sarvis
Revenue Agent (LMSB) Natural Resources, Group 1465

from: Raymond M. Boulanger, Attorney
Associate Area Counsel, CC:LM:F:HAR:B

subject: [REDACTED] / Form 872
TIN: [REDACTED]

This memorandum is in response to your request for advice dated June 18, 2002, concerning who is the proper party to extend the statute of limitations. This memorandum should not be cited as precedent.

It is our position at this time that [REDACTED] is the proper party to execute Form 872 (Consent to Extend the Time to Assess Tax) for the [REDACTED] and [REDACTED] taxable years. [REDACTED] is the proper party to execute Form 872 for [REDACTED].

ISSUE

Who is the proper agent for signing Forms 872 when affiliated groups filing consolidated returns change their common parent. U.I.L. Nos. 6501.08-09; 1502.77-00.

FACTS

[REDACTED] filed consolidated returns for the taxable years [REDACTED] and [REDACTED]. In [REDACTED] became a wholly-owned subsidiary of [REDACTED]. Thus [REDACTED] became the parent of [REDACTED] and [REDACTED]'s subsidiaries. [REDACTED] filed a consolidated return for [REDACTED]. [REDACTED] was not merged or liquidated and is in fact still in existence.

LAW AND ANALYSIS

Generally, the common parent, with certain exceptions not applicable here, is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent in its name will give waivers, and any waiver so given, shall be considered as having also been

given or executed by each such subsidiary. Treas. Reg. § 1.1502-77(a).

Thus, generally the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. Treas. Reg. § 1.1502-77(a). The common parent and each subsidiary which was a member of the consolidated group during any part of the consolidated return year is severally liable for the tax for such year. Treas. Reg. § 1.1502-6(a).

██████████ is still in existence and therefore, it has the authority under Treas. Reg. § 1.1502-77(a) to execute Forms 872, with respect to the consolidated group for the years in which it was acting as the common parent. This is true even though ██████████ is no longer acting as common parent of the affiliated group. Id.; Union Oil v. Commissioner, 101 T.C. 130 (1993); Treas. Reg. § 1.1502-77T. Thus, ██████████ is the proper entity to sign the Form 872 for the former ██████████ consolidated group for taxable periods ██████████ and ██████████.

The Form 872 for the ██████████ and ██████████ taxable years should be captioned as follows: "██████████ (EIN ██████████), formerly ██████████" and put an asterisk after it.

On the bottom line of the form, you should add the following:

*"With respect to the consolidated tax liability of the ██████████ consolidated group for the taxable periods ██████████ and ██████████.

Since ██████████ became the common parent of ██████████ and the subsidiaries in ██████████, it is the proper party to sign the Form 872 for the ██████████ taxable year. The Form 872 for the ██████████ taxable year should be captioned as follows:

██████████
(EIN - whatever ██████████'s EIN is)

Further, any return, statement or document made under any internal revenue law must be signed in accordance with applicable forms or regulations. I.R.C. § 6061. However, the regulations under section 6501(c)(4) do not specify who may sign consents executed under that section. As such, the Internal Revenue Service applies the rules applicable to execution of original tax returns to consents to the extension of time to make an assessment. Rev. Rul. 83-41, 1983-1 C.B. 349.

A corporation's income tax return must be signed by its president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. I.R.C. § 6062. These same parties are the appropriate persons to sign, pursuant to section 6501, an agreement for an extension of time to assess a tax liability. Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.

CONCLUSION

Based on the above, [REDACTED] is the proper agent to sign the Form 872 for the [REDACTED] and [REDACTED] taxable years. [REDACTED] is the proper agent for the [REDACTED] taxable year.

We are simultaneously submitting this memorandum to the National Office for post-review and any guidance they may deem appropriate. Consequently, you should not take any action based on the advice contained herein during the 10-day review period. We will inform you of any modification or suggestions, and, if incorporating any such recommendation.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

Since there is no further action required by this office, we will close our file in this matter ten days from the issuance of this memorandum or upon our receipt of written advice from the National Office, whichever occurs later. Please call Raymond M. Boulanger at (716) 551-5614, ext. 19, if you have any questions or require further assistance.

BRADFORD A. JOHNSON
Associate Area Counsel
LMSB, Area 1

By: _____
RAYMOND M. BOULANGER
Attorney (LMSB)